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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,730	02/27/2004	Joyce M. Mohr	23-0697	8387

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EXAMINER

KING, ANITA M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



This is the second office action for application number 10/789,730, Implement Retaining Device, filed on February 27, 2004.

### ***Cancellation of Claims***

Claims 2-4 and 8 have been canceled per applicant's request.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: a loop having a pair of opposite extents, each of the opposite extents of said loop united to said base portion, in claims 9 and 10.

### ***Claim Objections***

Claims 1, 5 and 10 are objected to because of the following informalities: in claim 1, line 4, "being" (first occurrence) should be deleted; and the limitations in lines 4-7 of claim 5, and lines 2-6 of claim 10, i.e., "said retention portion extending outwardly from said base portion such that said retention portion is adapted for inhibiting the writing implements from rolling off said base portion when the writing implements are positioned on said body member" is redundant, this limitation was previously cited in lines 11-15 of claim 1. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

Claims 1, 5-7, 9, and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if "a base portion" in line 10 of the claim is intended to refer to the original recitation of the term "a portion" in line 5 of the claim.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5-7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,572,941 to Arnos in view of U.S. Patent 5,725,189 to Landy. Arnos discloses a retaining device (Fig. 2) capable of inhibiting writing implements from rolling away from a user, the device comprising: a body member including a base portion (44) for positioning under an object (10) and a retention portion (46) coupled to and extending outwardly from the base portion; wherein the base portion comprises a free end positioned opposite of the retention portion for being inserted between the object and the support surface such that the base portions is retained in a desired position by the weight of the object; the retention portion of the body member having a width greater than a width of the base portion; wherein the

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retention portion comprises an arcuate exterior surface, the arcuate exterior surface being adapted for providing a smooth surface; the arcuate exterior surface forming a teardrop shape, wherein the retention portion comprises a narrow end representing the narrow portion of the teardrop shape such that the narrow end is coupled to the base portion, the teardrop shape of the retention portion providing a gradual incline; and wherein the retention portion comprises a loop having a pair of opposite extents, each of the opposite extents of the loop being united to the base portion.

Arnos discloses the claimed invention except for the limitation of the base portion tapering in thickness from the retention portion to the free end of the base portion such that the base portion is substantially wedge shaped for facilitating sliding of the base portion under the object. Landy teaches a device having a base portion (160) for positioning under a object (110) and a retention portion (180), and wherein the base portion tapers in thickness from the retention portion to the free end of the base portion such that the base portion is substantially wedge shaped. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the base portion in Arnos to have included the wedge shape as taught by Landy for the purpose of creating an angle of the device relative to the support surface to provide a tilt angle for the object supported by the base portion.

### ***Response to Arguments***

Applicant's arguments, see remarks, filed April 25, 2006, with respect to the rejection(s) of claim(s) 1 and 5-7 under 35 U.S.C. 102(b) and 103(a) have been fully

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considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of Arnos.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Anita M. King  
Primary Examiner  
Art Unit 3632

July 9, 2006